

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

RHONDA JACKSON, individually and  
on behalf of others similarly situated,

Plaintiff,

v.

NATIONAL GENERAL INSURANCE  
COMPANY,

Defendant.

Case No. 1:14-cv-927

**JURY TRIAL DEMANDED**

**COMPLAINT**

COMES NOW Plaintiff Rhonda Jackson, individually and on behalf of all others similarly situated, and for her Complaint against Defendant National General Insurance Company (hereinafter "NGIC" or "Defendant"), states and alleges as follows:

**Nature of Case**

1. NGIC employs hundreds of customer service representatives ("CSRs") who staff customer service telephone lines at call centers located in Winston-Salem, North Carolina, St. Louis, Missouri, Cleveland, Ohio, Hillsboro, Oregon, and Ontario, California. During relevant time periods preceding this action, NGIC required these CSRs to access computers and various computer programs, applications and data sources to become ready to begin taking calls before the beginning of their paid shifts and during unpaid lunch breaks, to log out of computer applications after completion of their paid shifts, and to read company communications outside of their paid shifts. All such actions were performed for the primary benefit of NGIC. As such, NGIC received unpaid, or underpaid, labor from its CSRs. Plaintiff seeks to recover unpaid

wages under the Fair Labor Standards Act (öFLSAö), 29 U.S.C. § 201 *et seq.*, the Missouri Minimum Wage Law (öMMWLö), R.S. Mo. § 290.500 *et seq.*, and Missouri common law.

### **Jurisdiction and Venue**

2. The FLSA authorizes court actions by private parties to recover damages for violation of the FLSA's wage and hour provisions. Jurisdiction over the FLSA claims of Plaintiff and other similarly situated CSRs is based on 29 U.S.C. § 216(b) and 29 U.S.C. § 1331 (federal question).

3. Missouri law authorizes court actions by private parties to recover damages for violation of the MMWL. R. S. Mo. § 290.527. Jurisdiction over all Plaintiff's state law claims is based on 28 U.S.C. § 1367 (pendent claims).

4. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), because NGIC maintains its principal place of business in this District, it conducts business in this district, it employs CSRs to work in this district, and substantial unlawful conduct giving rise to the claims occurred in this district.

### **Parties**

5. Plaintiff Rhonda Jackson has worked as a CSR for NGIC in Missouri since in or about January 2004. Plaintiff Jackson's consent to join this action is attached hereto öExhibit 1.ö

6. Plaintiff Jackson brings this lawsuit as a collective action under the FLSA on behalf of herself and all other similarly situated CSRs employed by NGIC in the last three (3) years.

7. Defendant NGIC is a Missouri corporation which maintains its principal place of business in the Middle District of North Carolina.

### **General Allegations**

8. The United States Supreme Court holds that preparatory work duties that are integral and indispensable to the principal work activity are compensable under the FLSA. *See IBP, Inc. v. Alvarez*, 126 S. Ct. 514 (2005). Although *Alvarez* arose in the donning and doffing context in a meat processing plant, its holding is directly applicable to NGIC's CSRs.

9. Plaintiff and similarly situated CSRs have engaged in preparatory activities and other related work activities that are integral and indispensable for them to perform their customer service duties. NGIC does not pay or underpays its CSRs for this work time; consequently, these CSRs consistently worked off the clock and without pay. Accordingly, under the holding of *Alvarez*, as well as under consistent rulings and interpretations of the United States Department of Labor, Plaintiff and all similarly situated CSRs are entitled to compensation for the time spent working before and after their paid shifts and during unpaid lunch breaks.

10. NGIC uniformly denied wages or underpaid wages and overtime pay to its CSRs by requiring them to perform off the clock work including booting up computers, logging into and out of various computer programs and applications, and reading company communications.

11. The deliberate actions of NGIC in not paying or underpaying CSRs their earned wages and overtime compensation violate the FLSA and Missouri law.

12. NGIC paid Plaintiff and its other CSRs on an hourly basis, and classified Plaintiff and other CSRs as non-exempt under the FLSA and the MMWL.

13. NGIC required these CSRs to be ready to work by the beginning of their paid shift and by the end of their unpaid lunch breaks.

14. NGIC's "ready to work" policy necessitated that the CSRs complete preparatory tasks prior to their paid shifts including booting up computers, logging onto NGIC's network, reading company communications, logging on to necessary computer programs and applications, and competing other essential tasks.

15. NGIC's written "tardiness" policy, which is part of its written policy entitled "NGIC POLICY SERVICES & SUPPORT ATTENDANCE GUIDELINES," expressly warns CSRs:

**Tardiness**

A tardy is defined as any time you are not at your work station, signed on to the computer and phone system, ready to take calls at your scheduled start time.

*Id.* (emphasis in original).

16. NCIG counts incidents of CSR's tardiness as partial or full disciplinary "occurrences" and its written "NGIC POLICY SERVICES & SUPPORT ATTENDANCE GUIDELINES" expressly provides various levels of discipline for total "occurrences."

17. NCIG evaluates and disciplines its CSRs based on an automated system of "schedule adherence," which measures (a) consistency between paid work time and scheduled work time and (b) consistency between availability to receive customer service calls and scheduled work time.

18. CSRs "schedule adherence" ratings are negatively impacted by performing preparatory tasks such as booting up computers, logging into and out of various computer programs and applications, and reading company communications during paid work time; thereby, NGIC discourages CSRs from performing such tasks during paid work time.

19. NGIC uses its "ready to work," "tardiness," "disciplinary occurrence," and "schedule adherence" policies and requirements, individually and in combination, to discourage

Plaintiff and other CSRs from clocking in prior to performing their necessary and indispensable preparatory activities prior to their paid shifts and prior to the end of their lunch breaks.

20. NGIC required Plaintiff and other similarly situated CSRs to be available to receive telephone calls until the end of their scheduled shifts.

21. NGIC's requirements of being available to receive telephone calls until the end of their scheduled shifts and "schedule adherence" combined to deprive Plaintiff and other similarly situated CSRs from receiving pay for work activities performed after their scheduled shifts.

22. NGIC's managers have consistently reinforced these policies and requirements which result in unpaid work through instructing, counseling and disciplining CSRs.

23. NGIC did not pay, and/or underpaid, Plaintiff and the CSRs to perform these integral and indispensable tasks.

24. NGIC did not accurately record all time worked by the CSRs, and specifically did not include all the time these CSRs spent performing integral and indispensable job duties, including logging on and off various computer applications, reading company communications, and completing documentation.

25. The net effect of the policies and practices maintained and administered by NGIC, instituted and approved by company managers, is that NGIC willfully failed to pay overtime compensation and willfully failed to keep accurate time records to save payroll costs. NGIC thus enjoyed ill-gained profits at the expense of its CSRs.

#### **Collective/Class Allegations**

26. Plaintiff brings this case as an "opt-in" collective action under 29 U.S.C. § 216(b) on behalf of all those who file a consent to join form with the Court.

27. Plaintiff, individually and on behalf of other similarly situated CSRs employed by

NGIC, seeks relief on a collective basis challenging, among other FLSA violations, NGIC's practice of failing to accurately record, and pay for, all overtime hours worked. The number and identity of other plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from NGIC's records, and potential opt-in plaintiffs may easily and quickly be notified of the pendency of this action.

28. Plaintiff brings Count II as a class action pursuant to Fed. R. Civ. P. 23, on behalf of herself and as the Class Representative of the following persons (the "Class"):

All current and former CSRs employed by NGIC at its call center in Town and Country, Missouri within two (2) years preceding the date of filing this action.

29. Plaintiff brings Counts III through V as a class action pursuant to Fed. R. Civ. P. 23, on behalf of herself and as the Class Representative of the following persons:

All current and former CSRs employed by NGIC at its call center in Town and Country, Missouri within five (5) years preceding the date of filing this action.

30. The state law claims, if certified for class-wide treatment, are brought on behalf of all similarly situated CSRs who do not opt-out of the class.

31. Plaintiff's state law claims satisfy the numerosity, commonality, typicality, adequacy and superiority requirements of a class action pursuant to Fed. R. Civ. P. 23.

32. The class satisfies the numerosity standards. The Class consists of hundreds of persons who are believed to be geographically dispersed. As a result, joinder of all Class members in a single action is impracticable. Class members may be informed of the pendency of this class action through direct mail and/or other methods.

33. Questions of fact and law common to the Class predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from NGIC's actions include, without limitation, the following:

- a. Whether NGIC failed to pay Class members wages and overtime required under R.S. Mo. § 290.500 *et seq.*;
- b. Whether NGIC failed to fully and accurately record the hours worked each day and each workweek by Class members as required under R.S. Mo. § 290.520;
- c. Whether contracts existed between NGIC and Class members requiring payment of wages;
- d. Whether NGIC breached and violated Contracts with Class members by failing to pay wages for time worked;
- e. Whether NGIC is liable to Class members pursuant to *quantum meruit*; and
- f. Whether NGIC has been unjustly enriched by its failure to pay Class members for time worked.

34. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the state law claims.

35. Plaintiff's claims are typical of those of the Class in that Class members have been employed in the same or sufficiently similar CSR positions as Plaintiff and were subject to the same unlawful practices as Plaintiff.

36. A class action is the appropriate method for the fair and efficient adjudication of this controversy. NGIC has acted or refused to act on grounds generally applicable to the Class. The presentation of separate actions by individual Class members creates a risk of inconsistent

and varying adjudications, establishing incompatible standards of conduct for NGIC and/or substantially impairing or impeding the ability of Class members to protect their interests.

37. Plaintiff is an adequate representative of the Class because she is a member of the Class and her interests do not conflict with the interests of the members of the Class she seeks to represent. The interests of the members of the Class will be fairly and adequately protected by Plaintiff and the undersigned counsel, who are experienced in prosecuting complex wage and hour, employment, and class action litigation.

38. Maintenance of this action as a class action is a fair and efficient method for adjudicating this controversy. It would be impracticable and undesirable for each member of the Class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members.

**Count I: Violation of the Fair Labor Standards Act of 1938**

39. Plaintiff reasserts and re-alleges the allegations set forth above.

40. At all times material herein, Plaintiff and other similarly situated persons have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201 *et seq.*

41. The FLSA regulates, among other things, the payment of overtime to CSRs who are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

42. NGIC is subject to the overtime pay requirements of the FLSA because it is an



enterprise engaged in interstate commerce and its CSRs are engaged in commerce.

43. NGIC violated the FLSA by failing to pay for overtime worked by the CSRs.

44. Plaintiff and all similarly situated CSRs are victims of a uniform compensation policy. Upon information and belief, the same unlawful compensation policy is applied to all of NGIC's CSRs at all of its call centers.

45. Plaintiff and all similarly situated CSRs are entitled to damages equal to the mandated overtime premium pay within the three (3) years preceding the filing of the Complaint, plus periods of equitable tolling, because NGIC acted willfully and knew, or showed reckless disregard for whether its conduct was prohibited by the FLSA.

46. NGIC has not acted in good faith or with reasonable grounds to believe that its actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiff and other similarly situated CSRs are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime pay permitted by 29 U.S.C. § 216(b). Alternatively, should the Court find NGIC had reasonable grounds to believe that its actions and omissions were not a violation of the FLSA, Plaintiff and all similarly situated CSRs are entitled to an award of prejudgment interest at the applicable legal rate.

47. As a result of the aforesaid willful violations of the FLSA's overtime pay provisions, overtime compensation has been unlawfully withheld by NGIC from Plaintiff and all similarly situated CSRs. Accordingly, NGIC is liable under 29 U.S.C. § 216(b), together with an additional amount as liquidated damages, pre- and post-judgment interest, reasonable attorneys' fees, and costs of this action.

WHEREFORE, Plaintiff and all similarly situated CSRs demand judgment against NGIC and pray for: (1) compensatory damages; (2) liquidated damages; (3) attorneys' fees and costs as

allowed by Section 16(b) of the FLSA; (4) pre-judgment and post-judgment interest as provided by law; and (5) such other relief as the Court deems fair and equitable.

**Count II: Violation of the Missouri Minimum Wage Law**

48. Plaintiff reasserts and re-alleges the allegations set forth above.

49. At all relevant times herein, Plaintiff and the Class have been entitled to the rights, protections, and benefits provided under the MMWL, R.S. Mo. § 290.500 *et seq.*

50. The MMWL regulates, among other things, the payment of overtime wages by employers, subject to limited exemptions not applicable herein. R.S. Mo. §§ 290.500(3) & (4); R.S. Mo § 290.505.1.

51. During all times relevant to this action, NGIC was the employer of Plaintiff and the Class within the meaning of the MMWL. R.S. Mo. §§ 290.500(3) & (4).

52. During all times relevant to this action, Plaintiff and the Class were NGIC's employees within the meaning of the MMWL. R.S. Mo. §§ 290.500(3).

53. The MMWL exempts certain categories of employees from its wage and other obligations, none of which apply to Plaintiff or the Class. R.S. Mo. §§ 290.500(3).

54. Pursuant to the MMWL, employees are entitled to be compensated at a rate of not less than one and one-half times the regular rate at which such employees are employed for all work performed in excess of forty (40) hours in a workweek. R.S. Mo. § 290.505.1.

55. NGIC pursuant to its policy and practice, violated Missouri's wage and hour laws by refusing and failing to pay Plaintiff and other similarly situated CSRs overtime wages required under the MMWL. R.S. Mo. § 290.505.1.

56. Plaintiff and the Class are victims of a uniform and employer-based compensation policy. This uniform policy, in violation of the MMWL, has been applied, and continues to be

applied, to all Class members.

57. Plaintiff and all similarly situated CSRs are entitled to damages equal to all unpaid overtime wages due within two (2) years preceding the filing of this Complaint plus periods of equitable tolling along with an additional equal amount as liquidated damages. R.S. Mo. § 290.527.

58. Plaintiff and the Class are entitled to an award of pre-judgment and post-judgment interest at the applicable legal rate.

59. NGIC is liable pursuant to R.S. Mo § 290.527 for Plaintiff's costs and reasonable attorney's fees incurred in this action.

WHEREFORE, on Count II of this Complaint, Plaintiff and all similarly situated CSRs demand judgment against NGIC and pray for: (1) compensatory damages; (2) liquidated damages; (3) attorney's fees and costs as allowed by R.S. Mo. § 290.527; (4) pre-judgment and post-judgment interest as provided by law; and (5) such other relief as the Court deems fair and equitable.

### **Count III – Breach of Contract**

60. Plaintiff reasserts and re-alleges the allegations set forth above.

61. During times relevant, Plaintiff and all others similarly situated entered into contracts with NGIC whereby such persons agreed to perform services as part of their employment by NGIC and NGIC agreed to compensate such persons for all such services based upon specified hourly rates of pay (hereinafter "the Contracts").

62. NGIC breached and violated the Contracts by failing to pay Plaintiff and all others similarly situated for time worked.

63. Prior to NGIC's breach and violation of the Contracts, Plaintiff and all others

similarly situated performed their duties under the Contracts.

64. As a direct result of NGIC's violations and breaches of the Contracts, as aforesaid, Plaintiff and all others similarly situated have been damaged.

65. Plaintiff and all similarly situated CSRs are entitled to damages equal to all unpaid wages due within five (5) years preceding the filing of this Complaint plus periods of equitable tolling.

66. Plaintiff and the Class are entitled to an award of pre-judgment and post-judgment interest at the applicable legal rate.

WHEREFORE, on Count III of this Complaint, Plaintiff and all similarly situated CSRs demand judgment against NGIC and pray for: (1) compensatory damages; (2) pre-judgment and post-judgment interest as provided by law; and (3) such other relief as the Court deems fair and equitable.

#### **Count IV – Quantum Meruit**

67. Plaintiff reasserts and re-alleges the allegations set forth above.

68. NGIC recognized the benefits conferred upon it by Plaintiff and others similarly situated.

69. NGIC accepted and retained the benefits under circumstances that would render such retention inequitable.

70. NGIC has thereby been unjustly enriched and/or Plaintiff and others similarly situated have been damaged.

71. The payment requested by Plaintiff and others similarly situated for the benefits produced by them is based on customary and reasonable rates for such services or like services at the time and in the locality where the services were rendered.

72. Plaintiff and the Class are entitled to damages equal to all unpaid wages due within five (5) years preceding the filing of this Complaint plus periods of equitable tolling.

73. Plaintiff and the Class are entitled to an award of pre-judgment and post-judgment interest at the applicable legal rate.

WHEREFORE, on Count IV of this Complaint, Plaintiff and all similarly situated CSRs demand judgment against NGIC and pray for: (1) compensatory damages; (2) pre-judgment and post-judgment interest as provided by law; and (3) such other relief as the Court deems fair and equitable.

#### **Count V – Unjust Enrichment**

74. Plaintiff reasserts and re-alleges the allegations set forth above.

75. Plaintiff and others similarly situated conferred benefits on NGIC and NGIC received such benefits conferred upon it by Plaintiff and those similarly situated.

76. NGIC appreciated the fact of the benefits.

77. NGIC accepted and retained the benefits in circumstances that render such retention inequitable.

78. NGIC has thereby been unjustly enriched and/or Plaintiff and others similarly situated have been damaged.

79. Plaintiff and all similarly situated CSRs are entitled to damages equal to all unpaid wages due within five (5) years preceding the filing of this Complaint plus periods of equitable tolling.

80. Plaintiff and the Class are entitled to an award of pre-judgment and post-judgment interest at the applicable legal rate.

WHEREFORE, on Count V of this Complaint, Plaintiff and all similarly situated CSRs demand judgment against NGIC and pray for : (1) compensatory damages; (2) pre-judgment and post-judgment interest as provided by law; and (3) such other relief as the Court deems fair and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby requests a trial by jury of all issues triable by jury.

Respectfully submitted,

/s/ Narendra K. Ghosh  
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